

Service Date: October 3, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF the Petition of the)	
Montana Power Company (MPC) and)	
Billings Generation, Inc. (BGI) to)	UTILITY DIVISION
Determine the Rates and Conditions of)	
a Power Purchase Agreement Between the)	
Parties.)	

IN THE MATTER OF the Complaint of F.)	
Lee Tavenner.)	

IN THE MATTER OF the Montana Power)	DOCKET NO. 90.8.51
Company's 1990-1991 Avoided Cost Com-)	
pliance Filing (filed July 11, 1990).)	ORDER NO. 5506

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PROCEDURAL ORDER

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Introduction

Pursuant to ARM 38.2.2701, a prehearing conference was held to consider this Docket on September 28, 1990. After considering the comments received at the prehearing conference, the Commission establishes the following Procedural Order.

In this Order the term "parties" includes the Petitioners, Montana Power Company (MPC) and Billings Generation, Inc. (BGI), Mr. F. Lee Tavenner, and all intervenors. Individuals or entities are not parties unless they have been granted intervention by the Commission.

Copies of all pleadings, motions, discovery requests, prefiled testimony and briefs shall be filed with the Commission and served on all parties. Copies of all discovery responses shall be served on the Commission, on the party making the discovery requests and on parties who request the responses pursuant to paragraph 8 of this Order. In the case of a filing directed to the Commission, such as motions, testimony and briefs, the original and ten copies shall be filed with the Commission. Service upon the parties shall be upon the parties' attorney of record and such other individuals as may be reasonably designated by the attorney of record.

All dates listed in the following schedule are mailing dates. Parties must mail all material by the most expeditious method available at reasonable cost. In choosing the "most expeditious method available," the parties should be cognizant of the obligations imposed upon other parties by the following schedule. Parties may make arrangements among themselves for the use of express mail or fax transmissions.

Schedule

Unless otherwise herein specified, the following schedule shall apply in this Docket:

- (a) October 12, 1990: Final day for written discovery directed to MPC and BGI. Final day for written discovery by all parties in the Complaint of Mr. Tavenner. Final day for written discovery to MPC on its 1990-91 avoided cost compliance filing.

- (b) October 15, 1990: Final day for timely filing of Petitions to Intervene by persons who are interested in and directly affected by matters in this Docket.
- (c) October 26, 1990: Final day for all answers and responses to written discovery directed to parties pursuant to paragraph 4(a).
- (d) November 9, 1990: Final day for completion and service upon MPC and BGI and other parties of any prepared testimony and exhibits of all parties except MPC and BGI. Final day for service of testimony by MPC and Mr. Tavenner on all parties in the Complaint of Mr. Tavenner.
- (e) November 13, 1990: Final day for written discovery directed to all parties on the testimony and exhibits submitted pursuant to paragraph 4(d).
- (f) November 16, 1990: Final day for completion of answers by all parties to written discovery made pursuant to paragraph 4(e).
- (g) November 21, 1990: Final day for service of rebuttal testimony which is in rebuttal to testimony filed pursuant to paragraph 4(d).
- (h) November 29, 1990: Opening day of hearing in Docket No. 90.8.51.

Intervention

Parties seeking to intervene after October 15, 1990, must file a Petition to Intervene with the Commission. The petition shall demonstrate (A) the position that the intervenor will take if the intervention is granted, (B) that the proposed intervenor has an interest in and is directly affected by this Docket, (C) that the intervention, if granted, will not delay or prejudice the proceeding in the Docket, and (D) good cause why the petition was not timely filed. (ARM Section 38.2.2401 et seq.).

Discovery

The term "discovery" as used in this order includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as informal "data requests." The Commission urges all parties to conduct their discovery as much as possible through the use of data requests.

written discovery and data requests will be served on all parties. This should serve to reduce the number of duplicate

requests in subsequent rounds of discovery. Unless otherwise agreed between individual parties, copies of answers to all written discovery and data requests will be served only on parties specifically requesting them and on the Commission. In this connection, the term "parties" includes the parties, their attorneys, and witnesses testifying on matters to which the answers relate, who are not located in the same town as the party. If any party wants material requested by any other party, it should so inform the party to whom the data requests or written discovery is directed. The Commission encourages all parties to scrutinize carefully the material that has been provided in the Docket prior to submitting data requests. This should serve to ease the burden on those parties answering data requests. The Commission further encourages each party to inquire of other parties concerning the most helpful and efficient format for data requests and responses.

MPC has requested that data requests be one to a page and indicate the MPC witness to whom each request is directed. Other parties may have similar format preferences.

Parties receiving written discovery or data requests have two (2) days from receipt of the same, or until a response is due, whichever is less, within which to voice any objections it has to the request. The objection and notice thereof shall be served upon the Commission and all parties of record. The Commission may dispose of such objections by prompt ruling, or may schedule arguments on the objections. Failure to object promptly will be deemed acceptance of the requests.

In the event any requesting party is dissatisfied with the response to any written discovery or data request, such party must, within two (2) days after receipt of such response, serve in writing upon the Commission, and simultaneously upon all parties of record, its objections to such response. The Commission may dispose of such objections by prompt ruling, or may schedule argument on the objections. The Commission will issue its order either sustaining or overruling the objections. If objections are

sustained, a time period will be set within which a satisfactory response must be made.

Submission of written discovery or data requests after the period established for the same will be allowed by leave of the Commission. Such requests will not be permitted unless the party making the request shows good cause as to why the requests were not submitted within the time period allowed.

Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in:

- (a) An order refusing to allow the disobedient party to support or oppose related claims, or prohibiting him from introducing related matters in evidence;
- (b) An order striking pleadings, testimony or parts thereof, or staying further proceedings until the request is satisfied, or dismissing the action or proceeding or any part thereof.

Neither the Commission nor the Commission staff is a party to this proceeding. Commission staff has the rights and responsibilities of parties under Commission rule. See ARM 38.2.601(n). The Commission directs its staff to make every good faith effort to meet the discovery deadlines imposed on parties in this Order. However, the Commission reminds parties to this proceeding that Commission staff, in addition to responsibilities imposed by this Order, has an overriding responsibility to advise the Commission in the furtherance of just and reasonable rates. That responsibility carries with it a duty to ensure that all issues are thoroughly explored on the record. If, after discovery deadlines have passed, and after diligent discovery efforts by parties and Commission staff, certain issues remain unexamined, the Commission reserves the right for its staff to conduct discovery beyond the deadlines contained in this Order. The inability, or the unwillingness, of parties to cooperate with Commission staff in responding to this late discovery may result in a continuance of the scheduled hearing, or in the reservation of certain issues for a future proceeding.

Testimony and Evidence

The Commission contemplates a progressive narrowing of issues as prefiled testimony proceeds from direct to rebuttal. Introduction of new issues or data in new areas will be carefully scrutinized and disallowed unless reasonably related to issues earlier identified in the application, in Commission orders or in testimony prefiled in conformance with this order.

At the hearing, prefiled direct, answer and rebuttal testimony will be adopted into the record without the need of recitation by the witness. This procedure will eliminate retyping of prepared testimony into the hearing transcript.

All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter the manner of identifying their exhibits.

When cross-examination is based on a document, not previously filed with the Commission, copies of the document will be made available to the Commission unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the Commission and all parties.

Parties may be permitted to present "live" rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or the testimony of a public witness. Such testimony will be allowed only by leave of the presiding officer.

Citizens and citizen groups will, in the discretion of the Commission, be allowed to make statements without having submitted prepared written testimony; in addition, if they have

prepared written testimony they may read it if they desire, or they may have it adopted directly into the record.

The rules of evidence applicable in the District Courts of the State of Montana at the time of the hearing in this Docket will be used at the hearing.

Prehearing Motions and Conferences

Motions by any party, including motions to strike pre-filed testimony and motions concerning any procedural matter connected with this docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party. If oral argument is requested, and the request is granted, the party requesting oral argument shall notice the same for hearing before the Commission.

The Commission may, at any time prior to the hearing, set a final Prehearing Conference. At that prehearing conference there may be discussed, among other things, the feasibility of settlement of any issues in the proceeding, simplification of issues, possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

Nothing in this order shall be construed to limit the legally established right of the Commission or its staff to inspect the books and accounts of MPC at any time.

DONE AND DATED THIS 2nd day of October, 1990 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

JOHN B. DRISCOLL, Commissioner

REX MANUEL, Commissioner

WALLACE C. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)